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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/065,451      | 10/18/2002  | William E. Berzowski | 10672.3801          | 1342             |

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EXAMINER

CHIN SHUE, ALVIN C

ART UNIT PAPER NUMBER

3634

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                       |  |  |
|------------------------------|---------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/065,451  | <b>Applicant(s)</b><br>BERZOWSKI, WILLIAM E. |  |
|                              | <b>Examiner</b><br>Alvin C. Chin-Shue | <b>Art Unit</b><br>3634                      |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,2 and 5-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if the "an observation tower", as set forth in claim 1, line 6, "said tower structure", as set forth in claims 2 and 6, and the "a tower" as set forth in claim 1, line 2, are the same element. The phrase "said ladder", as set forth in claims 7 and 8, lacks antecedent basis.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5,6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Cowan or Stanley, and Brown. Gordon shows the claimed system with exception of the means to allow a user to sit and the slidable device. Cowan at 10 and Stanley at 4 both show means to allow a user to sit. Brown shows a slidable device 260 to allow adjustable force fitting against the sidewalls of cargo frames. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gordon to comprise a means

to allow a user to sit, as taught by either Cowan or Stanley, to aid in the user's comfort, and a slidable device, as taught by Brown, to enable attachment of his channel members to side walls of different cargo side walls. Furthermore, to secure the sleeve 32 of Gordon to his channel member by a pin, as taught by Cordon at 25 for sleeve 24, and to provide the plurality of openings in the channel members instead of in the angle beam, would have been an obvious engineering expedient by the carrying forward of his teaching, and a mere reversal of the teachings in fig 8 of Brown, respectively.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Jorgensen and Brown. Gordon shows the claimed system with the exception of the ladder construction and the slidable device. Jorgensen shows an A frame ladder. Brown shows a slidable device 260 to allow adjustable force fitting against the sidewalls of cargo frames. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gordon to comprise an A frame ladder, as taught by Jorgensen, to facilitate climbing, and a slidable device, as taught by Brown, to enable attachment of his channel members to side walls of different cargo side walls.

Applicant's arguments filed 4.19.04 have been fully considered but they are not persuasive. Applicant stated that Brown is non-analogous, and that Jorgensen's

ladder is mounted on a tractor. With respect to Brown, the problem to be resolved between Gordon and the claimed invention is the means to attach his tower to the sidewall of a truck bed. Brown shows the claimed means for applicant's disclosed purpose, thus Brown is an analogous art and it is deemed proper for one of ordinary skill in the art to appreciate teachings of analogous arts to resolve the problem at hand. With respect to Jorgensen, applicant should direct his remarks to what the combination teaches, as Jorgensen was not used to teach a cargo bed, although a cargo bed is not a claimed element.


**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin C. Chin-Shue whose telephone number is 703-308-2475. The examiner can normally be reached on Monday-Friday, 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alvin C. Chin-Shue  
Examiner  
Art Unit 3634

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